IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
ORIGINAL JURISDICTION
Dated: Nainital: the 2nd day of November 2007
Criminal Second Bail Application No. 1214 of 2007
Order on the Bail application of accused.
CRIMINAL SIDE

Arun Kumar S/o Dharampal
R/o Village Khempur,
Police Station Kotwali Manglor,
District Haridwar

------Applicant (In Jail)

Versus

State of Uttarakhand ------ Opposite party

Arising out of Case Crime No.43 of 2007
Under Section 302, 301 and 377 IPC
Police Station – Kotwali Manglaur
District – Haridwar

Hon'ble Dharam Veer, J.

Heard Sri Vivek Shukla, learned counsel for the applicant and Sri Nandan Arya, learned A.G.A. for the state.

This is second bail application. First bail application was dismissed on 17.08.2007 as not pressed and not on merit.

In brief the prosecution case is that Gaurav aged about 6 years was playing along with the boys on 02.02.2007 about 6.00 PM in the village near temple. After that he was missed from the place of playing then father of Gaurav searched his boy nearby the village and in the house of his relatives. On 03.02.3007 the dead body of Gaurav was found in the sugarcane field of Zameer son Hameed. With the same averments, the F.I.R. was lodged by Sauraj, father of Gaurav on 03.02.2007 at 17.30 hours in Police Station Kotwali Manglaur, District Haridwar against unknown persons. During the course of investigation, the police have recorded the statement of Jakir Son of Hameed on 4.02.2007 in whose field the dead body of Gaurav was recovered. He has stated in his statement that on 02.02.2007 about 6-6.30 PM he and Fool Chand had seen that the present applicant and co-accused Rajesh were coming out from his sugarcane filed and Fool Chand has also given the same statement recorded under Section 161 Cr.P.C. by the Investigating Officer on 04.02.2007. Manoj son of Mangeram, aged about 16 years, has also given statement on 04.02.2007 under Section 161 Cr.P.C. before the Investigation Officer that on 02.02.2007 the village people were celebrating Ravi Das Jayanti and at about 6.30 PM in the evening, he had gone to the sugarcane field of Zakir Hameed for a natural call just then he heard the noise of crying of a child in that sugarcane field. He reached at the place of occurrence and saw that co-accused Rajesh was committing carnal intercourse against the order of nature with deceased Gaurav and present applicant Arun Kumar was

pressing his mouth and neck. He asked both the accused persons not to do like so but they did not ready to accept his request and in the meantime Gaurav died and the present applicant Arun Kumar inserted a sugarcane in the anus of Gaurav then he asked both the accused persons that he would inform the same fact to the parents of Gaurav. On this, Arun Kumar, who was armed with the knife caught him and threatened him that if he disclosed this fact to anybody, he would cut his neck and due to this reason he had not stated this fact on the same day to anybody. The statement of Manoj Kumar was also recorded under Section 164 Cr.P.C. by the Magistrate on 08.02.2007 and in the statement recorded under Section 164 Cr.P.C. he has given the same statement as he has given under Sectin 161 Cr.P.C.

Learned counsel for the applicant has submitted that on 05.02.2007, the Dy. S.P. Manglaur, District Haridwar has written a letter to Jaimal Singh Negi, Incharge Inspector, Kotwali Manglaur that in the aforesaid crime the investigation was entrusted to S.I. Raghuveer Singh and in such a heinous crime the investigation should have been conducted by the Incharge Inspector/S.O. minutely on the basis of facts and circumstances and accordingly he is being directed to conduct the investigation himself.

Learned A.G.A. has submitted that no allegation made against the S.I. Raghuveer Singh who was conducting the investigation but only the direction has been given to the Incharge Inspector, Kotwali Manglaur to conduct the investigation himself and hence as per the law and the rules, there is no irregularity in the investigation couducted by S.I. Raghuveer Singh.

Learned A.G.A. has further submitted that co-accused Rajesh committed carnal intercourse against the order the nature with a six years old child and the present applicant pressed his mouth and neck and also inserted sugarcane in his anus. He has further submitted that the present applicant was involved in the said crime.

After considering the nature and the way in which the present applicant along with the co-accused had committed a heinous crime with a minor boy of six years, the applicant does not deserve bail at this stage.

Accordingly, the bail application is hereby rejected.

(Dharam Veer, J.)

02.11.2007
RBS